Supreme Court, U.S.
FILED
AUG 0 4 2003
OFFICE OF THE CLERK

No. 02-1722

IN THE

Supreme Court of the United States

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 1445,
Petitioner,

v.

POLAND SPRING CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR THE PETITIONER

WARREN H. PYLE
18 Tremont Street
Boston, MA 02108

JAMES B. COPPESS
815 Sixteenth Street, NW
Washington, DC 20006

LAURENCE GOLD *
805 Fifteenth Street, NW
Washington, DC 20005
(202) 842-2600

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

IN THE

Supreme Court of the United States

No. 02-1722

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 1445,
Petitioner,

v.

POLAND SPRING CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR THE PETITIONER

Poland Spring's Brief in Opposition confirms the essential point of our Petition for *Certiorari*, *viz.* that

> "Like the Ninth Circuit's decision in the *Garvey v. Baseball Players* litigation, the First Circuit decision in this case 'conflicts with [this Court's] cases limiting review of an arbitrator's award entered pursuant to an agreement between an employer and a labor organization.' *Major League Baseball Players' Ass'n v. Garvey*, 532 U.S. 504, 505 (2001), granting certiorari and reversing per curiam *Garvey v. Major League Baseball Players' Ass'n*, 243 F.3d 547 (9th Cir. 2000)(table).

* * *

> "[In this instance,] the First Circuit has proceeded in an equally plain disregard of [a] fundamental limit on the judicial review of labor arbitration awards by overturning a labor arbitration decision because the court disagrees with the arbitrator's view of the meaning of the labor contract and by resolving the merits of the parties' dispute on the basis of the court's own view of the contract's meaning." Pet. 7.

Poland Spring confirms this basic point by expressly admitting the following: First, in overturning the arbitration award in this case, the First Circuit "itself review[ed] the language of the Contract to determine whether that language permitted Arbitrator Dunn's interpretation." Br. in Opp. 10. Second, in so doing, the court below followed "the approach [to reviewing arbitration awards] articulated by the First Circuit, [by which] the court first determines whether the language at issue is fairly susceptible to differing meanings," and "[w]here[, in the court's view,] the language is not susceptible to differing meanings, the court holds that the arbitrator lacks discretion to interpret it." *Id.* at 11. Third, in undertaking this review, "the First Circuit does not apply a purely literal approach to reviewing the language of an agreement," but "[i]nstead, [interprets] the language of an agreement . . . 'taken in context and with due regard for the surrounding circumstances.'" *Id.* at 13, quoting *Exxon Corp. v. Esso Workers' Union, Inc.*, 118 F.3d 841, 845 (1st Cir. 1997).

As Poland Spring sums up the First Circuit's approach, that court interprets the "language of [the] agreement"—read "with due regard for the surrounding circumstances"—to determine whether the arbitrator's "decision contradict[s] the intention of the parties." Br. in Opp. 13. And, according to Poland Spring, "the approach articulated by the First Circuit . . . is simply another way of articulating this Court's

prohibition against enforcing an award that deviates from the plain language of an agreement." *Id.* at 11.

But this Court has *never* charged a reviewing court with the task of policing an arbitration award for "deviations" from the contract language. To the contrary, from the *Steelworkers Trilogy* onward, this Court has consistently held that "so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *Steelworkers v. Enterprise Wheel Corp.*, 363 U.S. 593, 599 (1960).

Over the years, the Court has stated this holding in a variety of ways: "a court should not reject an award on the ground that the arbitrator misread the contract," *Paperworkers v. Misco*, 484 U.S. 29, 38 (1987); a court "must treat the arbitrator's award as if it represented an agreement between [the employer] and the union as to the proper meaning of the contract's words," *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62 (2000); the "[c]ourts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision . . . misinterprets the parties' agreement," *Major League Baseball Players' Ass'n v. Garvey*, 532 U.S. 504, 509 (2001).

The governing legal rule could not be clearer. Contrary to the First Circuit's understanding, a reviewing court may *not* vacate an arbitration award on the grounds that the arbitrator's interpretation of the agreement "deviates" from what the court believes to be the proper interpretation of "the plain language of the applicable contract." Br. in Opp. 10.

In order to vindicate the integrity of the law governing the judicial review of labor arbitration awards, this Court should, as it did in *Major League Baseball Players v. Garvey*, *supra*, grant *certiorari* and reverse the decision of the court below.

Respectfully submitted,

WARREN H. PYLE
18 Tremont Street
Boston, MA 02108

JAMES B. COPPESS
815 Sixteenth Street, NW
Washington, DC 20006

LAURENCE GOLD *
805 Fifteenth Street, NW
Washington, DC 20005
(202) 842-2600

* Counsel of Record